

As the court explained to Pearce, he must first comply with the Camp Lejeune Justice Act's exhaustion provisions before filing suit under the Act, and "[t]he administrative exhaustion requirement cannot be waived." Fancher v. United States, ___ F. Supp. 3d ___, ___, No. 5:22-CV-315, 2022 WL 17842896, at *7 (E.D.N.C. Dec. 20, 2022). Accordingly, "the court lacks subject-matter jurisdiction in this case and [Pearce's] claim[] must be dismissed without prejudice." Brewer v. United States, No. 7:22-CV-00150, 2023 WL 1999853, at *2 (E.D.N.C. Feb. 14, 2023) (unpublished); cf. Arbaugh v. Y & H Corp., 546 U.S. 500, 506–07, 514 (2006); In re Bulldog Trucking, Inc., 147 F.3d 347, 352 (4th Cir. 1998).

Pearce's response raises a number of allegations which may constitute a basis for a civil rights complaint. Cf. Lewis v. Casey, 518 U.S. 343, 351–57 (1996); Thornburgh v. Abbott, 490 U.S. 401, 407 (1989). Accordingly, the court directs the clerk to open a new civil rights action with Pearce's response and a copy of this order and to transfer the action to the United States District Court for the District of Arizona, where venue is proper. See 28 U.S.C. §§ 82, 1391(b). The court has not required Pearce to refile his allegations on the complaint form prescribed for use in this district or to complete an in forma pauperis application. The United States District Court for the District of Arizona is better positioned to address those issues.

In sum, the court DISMISSES the action WITHOUT PREJUDICE for lack of subject-matter jurisdiction and DIRECTS the clerk to open a new civil rights action with Pearce's response and a copy of this order and to transfer the action to the United States District Court for the District of Arizona. The clerk shall close the case.

SO ORDERED. This 17 day of February, 2023.



JAMES C. DEVER III
United States District Judge